Before the Lords Commiſſioners of Appeals in Prize Cauſes.

Koninghen Eſther,

John Gardner, Maſter.

John Gardner, the Maſter and Claimant of the ſaid Ship and her Tackle, Apparel, and Furniture, and alſo of all and ſingular the Goods, Wares, and Merchandizes, laden and taken in and with the ſaid Ship - - - - - - } Appellant;

AND

Matthias Kitshin, Commander of the private Ship of War the *Fonthill* - - - - - - - - - - - - } Reſpondent.

The Reſpondent's CASE.

1756, 17 *May*. Fact of the Caſe. WAR was declared againſt *France*.

This Ship was an *Engliſh* Ship, taken by the *French*, and by them condemned as Prize.—In the Month of *Auguſt* or *September*, 1758, at *Curacoa* ſhe took in a Lading of dry Goods, Wine, Flour, and Pieces of Eight, and carried the ſame directly to *Cape Francois*, a Settlement belonging to the *French* in the *Weſt-Indies*; and ſuch Cargo was conſigned to one *Gabriel Pinedo*, who went Supracargo of the Ship; and on the Ship's Arrival there the Maſter delivered her aforementioned outward Lading to him, and Permiſſion was granted by the *French* King's Officers there to diſpoſe of the Cargo at that place; and ſuch Permiſſion was granted on account of the Flour and Wine, of which they were in great want; and having delivered her outward Cargo ſhe took in her preſent Lading, conſiſting of Sugar, Indigo, and Coffee, for which ſhe paid the *French* Duties; and on or about the 15th of *October*, 1758, ſailed from thence for *Curacoa*, and on the 30th of the ſame Month was met by the Reſpondent in the *Fonthill* Privateer, who ſeized the ſaid Ship and Goods as Prize, and carried her to *Jamaica* for Adjudication.

27 *November*. The Captors filed their Libel as uſual in the Vice-Admiralty Court at *Jamaica*, for the Condemnation of the Ship and Cargo.

30 Ditto. *John Gardner*, the Appellant, who is a natural-born Subject of *England*, and reſides with his Wife and Family at *Curacoa*, and aſſerted Owner of part of the Goods, gave the following Claim for Ship and Goods, on behalf of himſelf and of *Aaron Henriques Maron*, a Burgher and Inhabitant of *Curacoa*, and a Subject of the ſaid *States General*, and for Coſts and Damages.

" The Claim of *John Gardner*, a Burgher of *Curacoa*, and a naturalized Subject " of the *States General* of the *United Provinces* of the *Netherlands*, Commander of " the Schooner *Koninghen Eſther*, and Owner of certain Merchandizes on board her, " as well on behalf of himſelf as of *Aaron Henriques Maron*, alſo a Burgher and an " Inhabitant of *Curacoa*, and a Subject of the ſaid States, Owner of ſaid Schooner " and her Tackle, Apparel, and Furniture, and of her general Cargo on board her; " and alſo on behalf of the Officers and Mariners of ſaid Schooner, Owners of certain

" private

" private Adventures on board her; for the Schooner, her Tackle, Apparel, and " Furniture, and all and every the Goods, Wares, and Merchandizes, and Effects on " board her, taken and ſeized by the Relators, and the Allegations of *John Gardner* " concerning the ſame.

" The ſaid Claimant denying that the Schooner, when ſhe ſailed from *Curacoa*, or at any " time ſince, had on board a Cargo conſiſting of Soldiers Arms, Powder, Ammunition, or any " Goods whatever to his Knowledge or Belief declared to be contraband, or prohibited by " any Treaty or Treaties ſubſiſting or in force between his *Britannick* Majeſty and the *States* " *General*, or that this Claimant did at any time intend to aid, ſtrengthen, or aſſiſt the " *French* King contrary to the Laws of Nations, or his Duty as a naturalized Subject of the " ſaid *States General*; alſo denying that he had at any time any verbal or other Inſtructions " from the *French* King, his Subjects, or Vaſſals, or from any Perſon in their behalf reſiding " within the Dominions of the *French* King; reſerving to himſelf all and all manner of " Benefit and Advantage of Exception to the many Errors, Uncertainties, and Inſuffi- " ciencies in the Libel contained, doth ſay, that the Schooner, her Tackle, Apparel " and Furniture, and the Goods on board at the Capture, ſave this Claimant's private " Adventures herein after particularly mentioned, was and now is the actual Property of " *Aaron Henriques Maron*, a Burgher and Inhabitant of *Curacoa*, and alſo a Subject of the " *States General*, that the ſame or any part thereof is not nor at the Capture was the Pro- " perty of the *French* King, his Subjects or Vaſſals, or any Perſon reſiding within his Domi- " nions, or held in Truſt for him, them, or any of them, or for his, their, or any of their " uſe.

" That at the Capture of the Schooner there were on board her, and delivered up to the " Captors, all and every the uſual, legal, and authentick Paſsports and Sea-papers that are " carried, or required by Treaties to be carried by Ships or Veſſels belonging to the " Dominions and Subjects of the *States General*, and neceſſary to warrant their free Trade; " that neither he, this Claimant, his Officers or Mariners, or any Perſon on board the " Schooner, by his Direction, or to his Knowledge or Belief, ſince his ſailing from *Curacoa* " did throw or cauſe to be thrown over-board, ſecrete, conceal, or otherwiſe deſtroy any " Papers, Paſsports, Bills of Lading, Invoices, Clearances, or other Inſtruments in Writing " whatſoever appertaining to the Schooner or Cargo.

" That there was found on board the Schooner at the Capture, two Caſks marked I G P, " one containing three-hundred and thirty-eight Pounds Weight of Indigo; the other, two- " hundred Pounds Weight of Indigo; and alſo twenty-ſeven Bags of Coffee marked I G P, " four other Bags of Coffee marked I G, only containing altogether, in the whole about " four-thouſand, eight-hundred Pounds Weight of Coffee, being the actual Property of " this Claimant as his own privileged Adventure, ſeparate and diſtinguiſhed from the prin- " cipal Cargo mentioned in the Bills of Lading and other Papers before mentioned; that the " two Caſks of Indigo and thirty-one Bags of Coffee containing as aforeſaid, or any Part " thereof, is not, nor was at the Capture the Property of the *French* King, his Vaſſals or " Subjects, or Perſons inhabiting within his Dominions, or held in Truſt for him, them, " or any of them, or for their Uſe, but was, and is the abſolute Property of this Claimant " only.

" That the Claimant is a naturalized Subject of the *States General*, and all and every the " Seamen, Mariners, and others on board the Schooner at the Capture, were, and are Sub- " jects of the ſaid *States*. That the Schooner at the Capture was, as this Claimant con- " ceives, being ſo adviſed, lawfully navigated on a lawful Voyage, had on board a lawful " Cargo, and was bound to *Curacoa*; that on her Voyage there ſhe was taken on the High " Seas by the Relators in this Cauſe, without ſight of Land, in an hoſtile Manner, contrary " to, and in abſolute Violation, as he is alſo adviſed and humbly inſiſts, of the ſtrict Harmony " and Neutrality, and alſo of the ſeveral Treaties now ſubſiſting between his *Britannick* Ma- " jeſty and the *States-General*.

" Denies that the Schooner was adopted to the *French* King, or in any Manner in his Ser- " vice or Employ, or in the Employ or Service of his Subjects or Vaſſals, or any Perſon in- " habiting within his Dominions; or held in Truſt for him, them, or any of them; or for " his, their, or any of their Uſe in any Voyage whatſoever, to the Knowledge or Belief of " this Claimant during the time he hath known her.

" That ſaid Claimant doth hereby proteſt againſt the illegal and unjuſt Capture and De- " tention of the Schooner, Goods, Wares, and Merchandizes; and for all Coſt, Loſſes, " Charges, Damages, and Expences that have ariſen, or may ariſe, or be occaſioned by means " thereof.

" Therefore on the Behalf aforeſaid, ſaid Claimant doth claim the Schooner *Koningben* " *Eſther*, and all and every the Goods, Wares, Merchandizes and Effects in her taken and " ſeized as aforeſaid; and humbly prays, that Reſtitution thereof may be awarded to the " Claimant on the Behalf aforeſaid, and that the Libel filed in this Cauſe may be diſmiſſed " with full Coſts and Damages."

Among the Ship-Papers is the Bill of Lading of this Cargo at *Cape Francois* bound to *Curacoa*.—And alſo a Paper being a Commiſſion from the Governor of *Curacoa*, in the Nature of

of a Letter of Marque, to ſeize any Ship that moleſts him, and bring herup to *Curacoa*, dated 5 *September*, 1758.

The Captors then proceeded to examine the Maſter and Mate of the *Koninghen Eſther* on the ſtanding Interrogatories, by whoſe Depoſitions, and alſo by the Ship-Papers, the Facts before ſtated are moſt clearly proved.

11 *December*. The Captors, according to the uſual Courſe of Proceeding in that Court, obtained a Commiſſion to examine Witneſſes on the Interrogatories by them filed, and they examined thereon the Reſpondent and his Steward, and alſo the Appellant.

This done the Claimant and Appellant alſo filed ſpecial Interrogatories, and himſelf and Mate were examined thereon; and the Claimant alſo filed additional Interrogatories, upon which himſelf and a Goldſmith at *Jamaica* were examined.—This laſt Set of Interrogatories was only to prove that the Ship-Papers were truly tranſlated.

And the other Examinations, as well on behalf of the Captor as Claimant, do confirm and corroborate the Examinations taken in preparatory, and very fully prove the Trade was carried on by Permiſſion of the *French* Governor at *Cape Francois*.

22 *Dec.* 1758. The Cauſe came on to be heard before the Judge of the Vice-admiralty Court at *Jamaica*, who condemned the Ship and the general Cargo, but reſtored the private Adventure of the Maſter.—From ſo much of the Decree as condemns the Ship and the general Cargo, the preſent Appeal is brought, the Præfertim whereof is as follows:

" And more eſpecially from the ſaid definitive Sentence or final interlocutory Decree read " and promulged, made or interpoſed by the ſaid Judge, and from the pretended promulging " thereof, and from his thereby refuſing to reſtore and not reſtoring the ſaid Schooner " *Koninghen Eſther*, her Guns, Tackle, Furniture, Ammunition and Apparel, and the general Cargo of Goods, Wares, Merchandizes, and Effects on board the ſame; and from " his thereby ordering, adjudging, and decreeing the ſaid Schooner *Koninghen Eſther*, her " Guns, Tackle, Furniture, Ammunition and Apparel, and the general Cargo of Goods, " Wares, Merchandizes and Effects on board the ſame to be condemned to the Uſe of the " Captors, and from his ordering, adjudging, and decreeing that the ſame be ſold, and the " Price and Prices of every Part and Parcel thereof be diſtributed and divided among the " Captors according to their Articles, and his Majeſty's Proclamation in that Behalf made " and iſſued."

And the Cauſe now comes on to be heard before their Lordſhips on the ſame Evidence as in the Court below, and the Reſpondent humbly hopes their Lordſhips will affirm that Part of the Sentence which is appealed from, with Coſts and Damages, for the following, among many other,

REASONS.

1. For that the Ship was taken on a Voyage from the *French* Colonies, and thereby became to all Intents and Purpoſes a *French* Ship, and liable to Confiſcation.

2. For that no foreign Ship by the Laws of *France* is permitted to carry on Trade in any Port or Place belonging to that Crown in *America*.

For all which, among many other Reaſons to be offered at the Hearing, the Reſpondent humbly hopes your Lordſhips will affirm the Decree appealed from, and diſmiſs the Appeal with Coſts.

G. HAY,
C. PRATT.

Lords Commissioners for Appeals.

KONINGHEN ESTHER,

JOHN GARDNER, Master.

John Gardner, the Master and Claimant of the above Ship and Goods - - - - - } Appellant;

AND

Mathias Kitchin, Commander of the private Ship of War the *Fonthill*, Captor of said Ship and Goods - - - - - } Respondent.

The RESPONDENT's Case.